

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIMBERLY A. SONES, *et al.*,

Plaintiffs,

v.

DENTAL EQUIPMENT, LLC, *et al.*,

Defendants.

No. 4:20-CV-00460

(Judge Brann)

MEMORANDUM OPINION AND ORDER

JUNE 30, 2020

I. BACKGROUND

Plaintiffs Kimberly A. Sones and Douglas Sones have sought damages after a medical device damaged Kimberly’s vision.¹ Defendants Dental Equipment, LLC and Kerr Corporation have each moved to dismiss.² The Court lacks personal jurisdiction over either Defendant. This threshold deficiency compels dismissal. The Court grants Defendants’ motions.

II. DISCUSSION

A. Legal Standards

Defendants’ motions proceed in part under Federal Rule of Civil Procedure 12(b)(2).³ A Rule 12(b)(2) motion is “inherently a matter which requires

¹ See Doc. 1-2.

² See Docs. 1-2, 17, 19.

³ Defendants’ motions also proceed under Federal Rule of Civil Procedure 12(b)(6), but the Court does not see a need to discuss this basis for dismissal. See *Melaragni v. Sandals*

resolution of factual issues outside the pleadings, i.e. whether *in personam* jurisdiction actually lies.”⁴ At the motion to dismiss stage, a plaintiff must “allege sufficient facts to establish a *prima facie* case of jurisdiction over the person.”⁵

Once a defendant raises a personal jurisdiction defense, the plaintiff must then “sustain its burden by establishing jurisdictional facts through sworn affidavits, testimony or other qualified evidence.”⁶ A plaintiff who “rel[ies] on the bare pleadings alone” does not sustain its burden; a “plaintiff must respond with actual proofs, not mere allegations.”⁷

Under Pennsylvania law, the reach of this Court’s personal jurisdiction is coextensive with the due process clause of the Fourteenth Amendment to the United States Constitution.⁸ The first and broadest inquiry is whether this Court has general personal jurisdiction. A party subject to a state’s general jurisdiction can be called to answer any claim against him in that forum, regardless of whether the cause of action has any connection to the state.⁹

Resorts, No. 4:14-CV-1815, 2015 WL 8152123, at *3 (M.D. Pa. Dec. 8, 2015) (“The Court need not address each and every argument, however, as the matter is disposed on the first basis, namely that this Court does not have personal jurisdiction over either [defendant].”) (Brann, J.).

⁴ *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, 66 n.9 (3d Cir. 1984).

⁵ *Cote v. U.S. Silica Co.*, No. 4:18-CV-01440, 2018 WL 5718285, at *1 (M.D. Pa. Nov. 1, 2018) (citation omitted).

⁶ *Gentex Corp. v. Abbott*, 978 F. Supp. 2d 391, 397 (M.D. Pa. 2013) (citation omitted).

⁷ *Time Share Vacation Club*, 735 F.2d at 66 n.9.

⁸ Fed. R. Civ. P. 4(e); *Time Share Vacation Club*, 735 F.2d at 63.

⁹ *Mellon Bank (East) PSFS, Nat’l Assoc. v. Farino*, 960 F.2d 1217, 1221 (3d Cir. 1992).

Absent this general authority, a court may exercise jurisdiction only if specific personal jurisdiction exists.¹⁰ The United States Court of Appeals for the Third Circuit applies a three-part test to determine whether specific personal jurisdiction exists.¹¹ First, the defendant must have “purposefully directed its activities” at the forum state.¹² Second, the litigation must “arise out of or relate to” at least one of those activities.¹³ Third, if the first two requirements are met, a court may consider whether the exercise of jurisdiction otherwise “comports with notions of ‘fair play and substantial justice.’”¹⁴

B. Analysis

Here, Defendants have each submitted affidavits that contest the Court’s personal jurisdiction and assert Defendants’ lack of contacts with the Commonwealth of Pennsylvania.¹⁵ In response, Plaintiffs rely on their bare pleadings. Plaintiffs do not provide any additional factual support.¹⁶

Plaintiffs have presented “unsupported references” – but such references do not make for “competent evidence.” Further, in a motion to dismiss for lack of personal jurisdiction, “the Court must resolve factual disputes in favor of Plaintiff[s].” Yet “Plaintiff[s] must produce such facts and evidence in the first

¹⁰ *Mellon Bank*, 960 F.2d at 1221.

¹¹ *O’Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 317 (3d Cir. 2007).

¹² *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

¹³ *Id.* (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 n. 9, (1984) (internal quotations omitted)).

¹⁴ *Id.* (quoting *Burger King*, 471 U.S. at 476).

¹⁵ See Docs. 18-1, 20-1.

¹⁶ See, e.g., Doc. 22-1 at 7-9.

place.” Here, “[Plaintiffs have] simply offered no fact for this Court to take as true.”¹⁷

When a defendant presents suitable affidavits, a plaintiff may not “repose upon their pleadings,” but “must counter defendants’ affidavits with contrary *evidence*.”¹⁸ Plaintiffs’ recitations of their original allegations do not suffice. As the Court lacks personal jurisdiction over Defendants, Defendants’ motions to dismiss are granted and this case is dismissed.¹⁹

III. CONCLUSION

The Court grants Defendants’ motions to dismiss. **THEREFORE, IT IS HEREBY ORDERED** that:

1. Dental Equipment, LLC’s Motion to Dismiss Pursuant to Rule 12(b)(2) and Rule 12(b)(6), Doc. 17, is **GRANTED**.
2. Kerr Corporation’s Motion to Dismiss Pursuant to Rule 12(b)(2) and Rule 12(b)(6), Doc. 19, is **GRANTED**.

¹⁷ See *McClung v. 3M Co.*, No. CV162301ESSCM, 2019 WL 4668053, at *6, *6 n.4 (D.N.J. Sept. 25, 2019); see also *Gallopo v. Giannella Modern Baking Co.*, No. 4:13-CV-3067, 2014 WL 3735347, at *5 (M.D. Pa. July 28, 2014) (“Plaintiffs have failed to sustain their burden of proof through sworn affidavits or other competent evidence that show Defendant . . . had sufficient contacts with Pennsylvania to establish personal jurisdiction.”).

¹⁸ *In re Chocolate Confectionary Antitrust Litig.*, 602 F. Supp. 2d 538, 559 (M.D. Pa. 2009) (emphasis in original).

¹⁹ Plaintiffs did not request jurisdictional discovery. But if they had done so, the Court would have denied that request. See, e.g., *Eurofins Pharma US Holdings v. BioAlliance Pharma SA*, 623 F.3d 147, 157 (3d Cir. 2010); *Sathianathan v. Pac. Exch., Inc.*, 248 F. App’x 345, 347 (3d Cir. 2007) (“As plaintiff failed to make even a threshold showing of jurisdiction, he was not entitled to the jurisdictional discovery he claims to have been denied.”).

3. Plaintiffs' Complaint, Doc. 1-2, is **DISMISSED WITHOUT PREJUDICE**.²⁰
4. The Clerk of Court is directed to close this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge

²⁰ See *Mohler v. Golden 1 Credit Union*, No. 4:17-CV-02261, 2018 WL 7075296, at *6 (M.D. Pa. Dec. 17, 2018), *report and recommendation adopted*, No. 4:17-CV-2261, 2019 WL 247396 (M.D. Pa. Jan. 17, 2019); see generally *Frederiksen v. City of Lockport*, 384 F.3d 437, 438 (7th Cir. 2004) (“A suit dismissed for lack of jurisdiction cannot also be dismissed ‘with prejudice’; that’s a disposition on the merits, which only a court with jurisdiction may render. . . . ‘No jurisdiction’ and ‘with prejudice’ are mutually exclusive.”) (citation omitted) (Easterbrook, J.).